

**DECISION OF THE HEARING EXAMINER
CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of

Frank Buxton and Cynthia Sears

CUP/SPR/SCUP/SSDP 12083

For a Conditional Use Permit,
Site Plan Permit, Shoreline
Conditional Use Permit and
Shoreline Substantial Development Permit

Introduction

Frank Buxton and Cynthia Sears, by their agent, Marja Preston, applied for a zoning conditional use permit, site plan review, shoreline conditional use permit and shoreline substantial development permit to convert a single family residence into a cultural facility (Yonder) at 15710 and 15700 Euclid Avenue NE.

An open record public hearing was held May 12, 2011. Jennifer Sutton, Planner, represented the Department of Planning and Community Development. Ms. Preston represented the applicants.

All section numbers in the decision refer to the Bainbridge Island Municipal Code, unless otherwise indicated.

After due consideration of all the evidence in the record consisting of the testimony and exhibits admitted at the hearing, the following shall constitute the findings, conclusions, and decision of the Hearing Examiner in this matter.

Findings

1. Marja Preston, agent for Frank Buxton and Cynthia Sears, applied for permits to allow the conversion of a portion of a single-family residence on the shoreline at 15710 into a conference center. The Director, Department of Planning and Community Development ("Director"), determined that allowing the conversion would require the permits discussed below.
2. The site for the conference center consists of two lots at 15710 and 15700 Euclid Avenue NE. The existing single-family residence is located on the northern property at 15710 and is connected by a gravel driveway to the southern property at 15700 where parking is provided. The applicants own the property and live in the residence on the lot adjacent to the subject site at 15720. The applicants have used the main floor of the residence as a meeting place for

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community groups and other events two to three times per week for several years. They intend to continue the use with meetings no more than three to four times per week. The great room and kitchen are devoted to the conference center use and the remainder of the building has guest quarters and a home theater for the owners.

3. The subject site is zoned R-2, Two Units per Acre, and the Bainbridge Island Comprehensive Plan designates the property as Open Space Residential (OSR)-2, along with the surrounding properties. It is within the Semi-rural environment in the City's Shoreline Master Program (SMP).

SITE PLAN AND DESIGN REVIEW

4. Site plan approval is required for the conversion. The basis for site plan and design review for the Planning Commission's recommendation and the Hearing Examiner's decision is the list of criteria in Section 18.105.060. Criteria relevant to the proposal are:

A. The site plan and design is in conformance with applicable code provisions and development standards of the applicable zoning district;

* * *

C. The locations of the buildings and structures, open spaces, landscaping, pedestrian, bicycle and vehicular circulation systems are adequate, safe, efficient and in conformance with the nonmotorized transportation plan;

D. The proposal will be served by adequate public facilities including roads, transit, water, fire protection, sewage disposal facilities and storm drainage facilities;

E. The site plan and design is consistent with the design guidelines of Chapter 18.41 BIMC, or other applicable design guidelines of the zoning district;

F. No harmful or unhealthful conditions are likely to result from the proposed site plan;

G. The site plan and design is in conformance with the comprehensive plan and other applicable adopted community plans; and

H. Property subject to site plan and design review which contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter.

5. The lot developed with the residence to be converted is 1.06 acres in area and the lot with the parking contains 0.67 acres for a combined total of 75,358 square feet, satisfying the requirement for a minimum size of 20,000 square feet in the zone. Section 18.30.040D. The Director recommends that a condition be imposed requiring a boundary line adjustment to consolidate the two lots so that accessory parking is on the same lot as the commercial use, as required by code. The boundary lot adjustment is in process. Testimony of Preston. Both lots have the minimum lot width of 70 ft. required for lots adjacent to saltwater.

6. Section 18.30.050 allows lot coverage up to a maximum of 20 percent or 15,071 for the combined properties, except that this nonresidential use is allowed one-half of the base coverage. Section 18.108.040C(1)g. The existing, and proposed, coverage does not exceed the maximum allowed.

7. Section 18.30.060 requires a setback of at least 25 ft. from the street, and side setbacks of no less than 5 ft. with a combined side yard requirement of at least 15 ft. All three requirements are met by the site development.

8. For a cultural facility use, the Director is to determine the number of parking spaces that would be adequate to accommodate peak demand based on information provided by the applicant. Section 18.81.030M. A total of 25 spaces are currently provided in the parking lot and in a small area in front of the building. A parking and traffic analysis prepared by applicants' traffic consultant (Exhibit 10) estimated parking demand based on Institute of Transportation Engineers categories for comparable uses and arrived at an 85th percentile peak parking demand of 22 spaces, so including an additional ten percent to avoid unnecessary circulation, 24 spaces would be adequate. The building official reviewed the proposal and requires that one of the parking spaces be a 16-foot wide van accessible parking space, which may result in the loss of one space. The Director is satisfied that regular 24 spaces will be adequate, however recommends a condition incorporating a requirement to consider mitigation measures if attendance is likely to exceed 24 persons.

9. Section 18.85.070 requires that either 15 percent of all significant trees or 30 percent of the significant tree canopy be preserved. The landscape plan, Exhibit 23, identifies significant trees and does not show the removal of any. The site actually contains a considerably greater number of significant trees than shown, all to be retained. Testimony of Sutton. The Director recommended a condition be imposed to assure that the required landscaping be retained and that replanting be required if required plants are removed.

10. The perimeter landscaping section, Section 18.85.070, requires perimeter buffers for a nonresidential use in a residential zone as follows: a partial screen buffer of 25-15 feet width between the use and the right-of-way, so along the Euclid Avenue frontage for this site; and a 25-15 foot full screen buffer to the residential uses on both sides. The existing vegetation along the street is wider than 25 ft. and exceeds the partial screen requirement. The two sides are heavily vegetated including mature, multi-storied vegetation. The vegetation is between 15-25 feet in width. The calculation for determining the number of trees for a full screen in the two sides results in a requirement of 30 trees for each. The actual number counted by staff is 22-25 but because of their maturity and the understory present, staff recommends that the existing vegetation is sufficient for a full screen. Conditions are recommended to maintain the full screen. Though there is a path through the perimeter vegetation to the residence to the north where the applicants live, staff does not recommend requiring its removal as the screening is sufficient.

11. Parking lots must meet the landscaping requirements for lots not adjacent to rights-of-way of Section 18.85.070E. One tree per eight parking stalls and landscaped areas at the ends of parking aisles are required. The existing vegetation exceeds the required numbers and though the vegetation is in a more natural pattern than contemplated by the standards, staff view it as satisfying the standards and recommend a condition to assure landscaping satisfying the intent remains.

12. The Bainbridge Island Fire Department, the Building Official, the Public Works Department, the Development Engineer, and planners of the Department of Planning and Community Development reviewed the location of the building, open space, landscaping, and

pedestrian, bicycle and vehicular circulation systems and found the proposal to be adequate, safe, and efficient. The fire department, building official and health department requested conditions, recommended by the Director, to assure the development meets code standards.

13. The City's Development Engineer reviewed the parking demand analysis and concluded that the conference center would not generate more than 50 vehicle trips per day and therefore, based on Section 15.32.030, does not require additional traffic analysis because that level is not likely to degrade the level of service at intersections in the area. Exhibit 29.

14. The Bainbridge Island Fire Department reviewed the application and required that a portion of the driveway loop be widened to 12 ft. with an overhead clearance of 13 ft. 6 inches along the entire loop and that a dry chemical fire extinguisher be added to the first floor. The requirements are included in a recommended condition.

15. No additional storm drainage improvement is required as the conversion is within existing development.

16. The Director determined that the requirement to review a cultural facility against the Light Manufacturing design guidelines is not applicable when no exterior construction or new site development is proposed. The existing house is of a scale and design that is similar to that of neighboring single-family houses.

17. The City reviewers did not identify any harmful or unhealthful conditions and the record does not otherwise show any such conditions.

18. In addition to the SMP element of the Comprehensive Plan, the goal of the Land Use Element to retain existing vegetated buffers to preserve the Island's character and the forested view from the road, OS 1.4, would be forwarded by this proposal that leaves the vegetation untouched. The proposal would not appear to be inconsistent with any other Comprehensive Plan goals.

19. The site does have a slope greater than 40 percent, a geological steep slope critical area pursuant to Chapter 16.20. A buffer equal to the height of the slope or 50 ft., whichever is greater, is required plus a building setback. Section 16.20.150E.2. No work is proposed within the buffer or setback.

Conditional Use Permit

20. The proposed use is classified as a "cultural facility" under the zoning code. Cultural facilities are permitted as conditional uses in the R-2, 2 Units per Acre Zone. Section 18.30.040. The criteria for conditional use approval are as follows:

1. The conditional use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property;
2. The conditional use will be served by adequate public facilities including roads, water, fire protection, sewer disposal facilities and storm drainage facilities;

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3. The conditional use will not be materially detrimental to uses or property in the immediate vicinity of the subject property;
4. The conditional use is in accord with the comprehensive plan and other applicable adopted community plans, including the nonmotorized transportation plan;
5. The conditional use complies with all other provisions of this code;
6. The conditional use will not adversely affect the area or alter the area's predominantly residential nature; and
7. All necessary measures have been taken to eliminate the impacts that the proposed use may have on the surrounding area.

Section 18.108.040A.

21. Cultural facilities in residential zones must meet these additional criteria:

- a. Applicants are required to submit a traffic report, showing the effects on level of service on affected roads. Proposed mitigations for degradation of the LOS must be submitted as part of the application.
- b. All sites must front on roads classified as residential suburban or above on the Bainbridge Island Functional Road Classification Map.
- c. Noise levels shall be in compliance with BIMC 16.16.020 and 16.16.040A.
- d. The appropriate approvals of sewer and water supply must be submitted at the time of application.
- e. A fencing plan or alternative methods to protect the public health, safety and welfare must be submitted at the time of application.
- f. The applicant shall provide perimeter buffers of vegetation either retaining existing or planting a new one in compliance with BIMC 218.85.070D.4....
- g. These conditional uses are limited in lot coverage to only 50 percent of the allowable lot coverage in the zone in which they are located.

* * *

- h. Vehicular, pedestrian and bicycle access and site circulation must be submitted at the time of application and approved by the city....
- i. The applicant shall submit a site and building design proposal that meets the design principles and guidelines found in BIMC 18.41.070, Light manufacturing design guidelines, and incorporates conditions deemed applicable by the director in accordance with this chapter. Each proposal will be evaluated for adequate vegetated roadside views, landscaping buffers for parking and service areas, scale of proposed construction including bulk and height and harmonious architectural design features compatible with the surrounding neighborhood.

* * *

Section 18.108.040C.1.

22. Finding no probable significant adverse impacts from the proposal, the City's Responsible Official issued a Determination of Nonsignificance (DNS) pursuant to SEPA on March 4, 2011. [Exhibit 25] The DNS was not appealed.

23. Euclid Avenue is classified Residential Urban on the City's Road Classification Map.

24. Noise levels associated with the conference use are not expected to exceed the levels permitted in Ch. 16.16.

25. Regarding approval of sewer facilities, Exhibit 22 shows that an application has been made to Kitsap County Health District for a Commercial Building Clearance. The staff report, Exhibit 28, states that the approval has been given. Water is supplied by the Port Madison Water System.

26. The Director did not require a fencing plan because of the well-established vegetation buffers.

Shoreline Conditional Use Permit and Shoreline Substantial Development Permit

27. The Planning staff, after consultation with the state Department of Ecology, determined that use as a conference center meets the definition of a water-enjoyment commercial use under the SMP. Though there is no direct access to the shoreline, the site provides views for people at the site of Port Madison that make the site an attractive retreat or meeting place. A water-enjoyment commercial use is a Conditional Use in the Semi-rural environment. Section 16.12.150. Water-enjoyment commercial uses require a 50 ft. native vegetation zone measured from the OHWM. Buildings cannot exceed 30 ft. in height. To be approved, the proposed use must be consistent with the provisions of the Shoreline Management Act, 90.58 RCW, the SMP, and the criteria for shoreline conditional use permits in Section 16.12.380C. Section 16.12.360. The cumulative impact on the shoreline environment and resources of additional past and future requests for similar development also are required to be considered.

28. Section 16.12.380C(1) provides:

Uses classified as conditional uses may be authorized; provided, that the applicant can demonstrate all of the following:

- a. The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the master program.
- b. The proposed use will not interfere with the normal public use of the public shorelines.
- c. The proposed use of the site and design of the project will be compatible with other permitted uses within the area.
- d. The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located.
- e. The public interest suffers no substantial detrimental effect. (WAC 173-14-140(1) or its successor.)

f. The proposed use is consistent with the provisions of the zoning ordinance (BIMC Title 18) and the comprehensive plan (Ordinance No. 94-21.)

29. In making a decision on a shoreline substantial development permit, the following are to be considered: the applicable provisions of the Shoreline Management Act, the SMP, all other applicable law, and related documents and approvals, and whether the cumulative impact of additional past and future requests that reasonably may be made given the comprehensive plan would result in substantial adverse effects on the shoreline environment and resources. Section 16.12.370E(4)b.

30. Section 16.12.350B provides that:

1. The City of Bainbridge Island hearing examiner is vested with authority to:

a. Approve, approve with conditions, or deny shoreline variance and shoreline conditional use permit applications after a public hearing and after considering the findings and recommendations of the director, which shall be given substantial weight; provided, that decisions may be appealed in accordance with BIMC 16.12.370.B.

31. The policies of the Shoreline Management Act set out in RCW 90.58.020 include protecting against adverse impacts to the land, to its vegetation, and to wildlife and the waters of the state. The proposal, which does not involve new development or a use affecting wildlife or waters, would be consistent with these policies. It also would afford visual access to the shoreline to additional numbers of people.

32. The native vegetation zone is intact in that the site of the building is beyond the 50 ft., as is the roadway. The building does not exceed the 30 ft. height limit.

33. Bainbridge Island's SMP, which is an element of the Comprehensive Plan ("CP"), contains policies and regulations, incorporated into the Municipal Code, applicable to this proposal. The policies related to economic development and commercial development limit new commercial development to those classified as water-dependent, water-related, or water-enjoyment uses. The proposal does not involve new development, but if it did, the use is classified as water-enjoyment so is consistent with this policy.

34. The conference center would not interfere with the normal public use of public shorelines.

35. The conference center use is contained within an existing single-family house and well buffered by vegetation screening it and its parking from neighbors. It is notable that there was no comment from the public about the proposed use. Because the conference center has been in operation for several years, it is reasonable to infer from the absence of comment that the use is compatible with the existing uses in the neighborhood.

36. The building is set more than 70 ft. back from the top of the slope to the shoreline. With no access to the shoreline there would be no unreasonably adverse effects to the shoreline environment.

37. Given that the parking demands can be accommodated on site and the number of vehicular trips generated by the use would not degrade levels of service on the affected roadways, there does not appear to be any reason the public interest would suffer substantial detrimental effect.
38. Findings in the sections above show that the proposal is consistent with provisions and standards in the zoning ordinance and with the comprehensive plan.
39. The Director considered potential cumulative impact on the shoreline from similar requests. The Director noted that there have not been past requests for conversion of single-family uses to commercial use in the past nor does the Director expect many in the future. The Director believes that the cumulative impact of granting the application would be minimal.
40. The Director recommended approval of the Shoreline Conditional Use and substantial development permit subject to imposition of the conditions discussed above.
41. Exhibit 28 indicated that the Planning Commission recommended approval at a public meeting on December 16, 2010.

Conclusions

1. The Hearing Examiner has jurisdiction to hear and decide this matter.
2. Notice and public hearing requirements of the Code were met.
3. The findings of fact show that the proposed conversion satisfies the site plan and design review decision criteria in that, with conditional use permit approval, the site plan shows locations of the structure, open space, parking, etc., that are adequate, safe and efficient, the proposal is consistent with the standards and requirements of the Code for the zone, public facilities are adequate for the use, the existing house is of design and size that fits in the neighborhood, that the conversion would not harm the neighborhood or environment, it conforms with the comprehensive plan, and it would not affect the critical area. Site plan and design review should be approved.
4. Most of the same findings that supported the site plan review approval respond to the criteria for approval of a conditional use permit under the zoning code. Those findings show that the conference center located in a single-family residential structure would blend into the neighborhood, will be served by adequate public facilities, will not be materially detrimental to uses and property in the vicinity, will be consistent with the comprehensive plan, complies with other Code provisions, will not alter the residential character of the area, and that conditions are proposed to mitigate impacts the use could have if expanded or conditions of the site changed. To assure that parking demand does not impact the neighborhood, the condition recommended by the Director regarding parking should be modified to require use of mitigating measures if the demand exceeds that accommodated on site. In addition, the findings show the special criteria for a cultural facility are met as well in that the LOS would not be degraded, the site fronts on an appropriately classified street, noise code limits would not be exceeded, sewer and water supply are addressed, no fencing is required because of their dense vegetation, adequate vegetation is present to provide the required buffer screens, lot coverage is within that allowed, and the design

is appropriate. Given that the criteria are satisfied, the requested conditional use permit should be granted with appropriate conditions.

5. The Director's recommendation to approve the shoreline substantial use and substantial development permit is supported by the findings that show that the use is consistent with the policies of the Shoreline Management Act, is consistent with the SMP and comprehensive plan, will not affect public use of the shorelines, the shoreline environment or public interest, and should have a minimal cumulative impact. With the conditions recommended by the Director, the shoreline conditional use permit and shoreline substantial development permit should be granted.

Decision

The Site Plan is approved, the Conditional Use, Shoreline Conditional Use and Shoreline Substantial Development Permits are granted all subject to the following conditions:

Conditions

1. The applicant is required to submit a building permit within 90 days of final approval of the permits by the Department of Ecology. The site shall be developed in substantial conformance with the site plan received July 21, 2010 (Exhibit 7). New parking spots shall be in conformance with the site plan received February 4, 2011 (Exhibit 5).
2. The building permit application shall contain any floor plans, exterior elevations, or site plan to adequately address the comments from Building Official Mark Hinkley, outlined in a March 15, 2011 memorandum (Exhibit 27). The alterations required for the building permit are also listed as conditions 2 through 9 below.
3. 2009 International Building Code (IBC) and all other codes and ordinances adopted by the City of Bainbridge Island apply.
4. A certificate of occupancy is required for the cultural facility/ residence structure: B/R-3 Occupancy (Non-separated Use), Type V-B Construction, Sprinklered.
5. A 16-foot wide van accessible parking space is required near the accessible entrance. It shall be constructed with a firm, compacted, level surface and signage per ANSI A117.1-2003.
6. Provide way-finding signage for the accessible entrance path to the Great Room.
7. Entrance pathways shall be 36 inch minimum width, constructed of a firm, compacted surface with 2 percent maximum cross slope.
8. Provide signage for handicapped accessible restrooms.
9. Guardrails at deck and stairway must be 42 inches high with balusters or ornamental patterns such that a 4 inch diameter sphere cannot pass through an opening up to a height of 36 inches. From a height of 36 inches to 42 inches above the adjacent walking surfaces, a sphere 4 3/8 inches in diameter shall not pass.
10. Handrails are required on both sides of stairways, equipped with 12-inch extensions top and bottom and returned to either the wall, newel post, or the floor.
11. The building permit shall integrate the changes listed in Bainbridge Island Fire Department Memo of August 24, 2010 (Exhibit 16) to the Fire Marshall's satisfaction:
 - a. The northern one-half of the 'loop' drive needs to be widened to 12 feet with an overhead clearance of 13'6" along the entire loop.

- b. A minimum of one 5 lb, 2A 10BC dry chemical fire extinguisher needs to be added on the first floor.
12. A copy of the Commercial Building Clearance submitted to the Kitsap County Health District shall be submitted with the building permit application.
 13. To mitigate the possible impact on adjacent properties from light and glare, all exterior lighting shall be hooded and shielded so that the bulb is not visible from adjacent properties. All landscape lighting shall be downcast and lighting within surface parking lots shall be no higher than 14 feet above grade. All exterior lighting shall comply with BIMC Chapter 15.34. Exterior lighting will be evaluated for compliance prior to final building permit inspection.
 14. Prior to the issuance of any building permits a Boundary Line Adjustment shall be submitted, approved, and recorded with the Kitsap County Auditor to aggregate the two properties.
 15. New parking spaces shall be in substantial conformance with the site plan received February 4, 2011 (Exhibit 5), except for changes required to meet these conditions of approval. A parking space may be lost to integrate the van accessible parking space. Parking spaces must meet the minimum dimensional requirements of BIMC Section 18.81.070. No more than 30 percent of total parking spaces may be compact spaces.
 16. Yonder Retreat Center must continue to encourage the use of carpooling. If attendance at an event will exceed 24 people, Yonder management shall implement one or more of the parking mitigation measures outlined in the parking demand analysis prepared by RTC Transportation Consulting, dated June 16, 2010 (Exhibit 10).
 17. The building permit site plan shall clearly identify the location and quantity of bicycle parking spaces. A minimum of 5 spaces is required. The bicycle racks shall be installed prior to final inspection of the building. Pursuant to BIMC Section 18.81.140.B, an applicant may request, and the director may approve, a reduction or waiver of the requirements. The applicants shall submit their request in writing.
 18. The existing vegetation meets the perimeter landscaping requirements pursuant to BIMC 18.85.070.D.4, outlined below. The existing vegetation in these areas shall be maintained, unless allowed to be removed in accordance with condition 20.
 - A 25-foot partial landscaping screen is required adjacent to the Euclid Avenue right-of-way.
 - A 15-foot full landscaping screen is required along the northwestern and southeastern property lines, to adjacent residential uses.
 19. The landscaping around the southern parking area shall meet the requirements outlined in BIMC Section 18.85.070.E.1 for parking lots not located adjacent to a public right-of-way: one tree is required for every 8 parking stalls, and a minimum 100 square foot landscaped area shall be at the end of parking aisles. The existing landscaping around the parking lot meets this landscaping requirement.
 20. Future removal of any vegetation within a required landscape area shall require a clearing permit. Replanting may be required to ensure continued compliance with landscape perimeter and parking lot landscaping requirements.
 21. Any exterior trash receptacles/recycling facilities shall be fully screened with solid walls and gates. The screening enclosures shall be architecturally consistent with the adjacent structures. The building permit site plan and elevations shall clearly show the trash and recycling areas.

22. Future construction or other site development shall be evaluated for compliance the City's Critical Areas Ordinance, BIMC Chapter 16.20, Shoreline Master Program, BIMC Chapter 16.12, and zoning requirements (BIMC Title 18) (or its successors).
23. If the use expands beyond what is approved through this decision, e.g., more than four meetings per week, new Shoreline permits, Site Plan and Design Review or Conditional Use Permits may be required.

Entered this 23rd day of May 2011.

/s/ Margaret Klockars
Margaret Klockars
Hearing Examiner *pro tem*

Concerning Further Review

NOTE: It is the responsibility of a person seeking review of a Hearing Examiner decision to consult applicable Code sections and other appropriate sources, including State law, to determine his/her rights and responsibilities relative to appeal.

The decision of the Hearing Examiner is the final decision of the City in this matter. The State Department of Ecology will approve, approve with conditions or deny the shoreline conditional use within the 30 days of the date it receives the permit from the City. Appeal of the Department of Ecology's decision is to the Washington State Shorelines Hearings Board as provided by RCW 90.58.180 (or its successor) and Chapter 461-08 WAC (or its successor). To be timely, petition for review must be filed within the 21-day appeal period following the decision by the Department of Ecology. [see BIMC 16.12.380].